

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA,

v.

ELI CLARK,

Defendant.

---

17-CR-43-V  
ORDER

Defendant Eli Clark is charged, along with co-defendant Rhea Walker, in a three-count superseding indictment. Both defendants are charged with (1) conspiring to possess 28 grams or more of cocaine base with the intent to distribute that substance and conspiring to use and maintain a place for the purpose of distributing cocaine base, in violation of 21 U.S.C. § 846; (2) possessing 28 grams or more of cocaine base with the intent to distribute it, in violation of 21 U.S.C. § 841(a)(1) and 841(b)(1)(B); and (3) maintaining a drug-involved premises, 229 Crowley Avenue, Upper, Buffalo, New York, in violation of 21 U.S.C. § 856. See Docket Item 13.

On June 12, 2017, Clark moved to suppress evidence that was seized from 229 Crowley Avenue on October 21, 2016, pursuant to a search warrant issued by New York State Supreme Court Justice Richard C. Kloch. See Docket Item 25. On June 22, 2017, the government responded to the defendant's motion. See Docket Item 27. On July 25, 2017, Clark filed an affidavit of standing in support of his motion to suppress. See Docket Item 28.

On February 1, 2018, Magistrate Judge H. Kenneth Schroeder, Jr., issued a Report, Recommendation and Order ("R&R"), recommending the denial of the

defendant's motion to suppress. See Docket Item 37. Specifically, Judge Schroeder rejected Clark's arguments that the search warrant was not supported by a sworn statement of the confidential source and that the search warrant application therefore lacked probable cause. *Id.* The confidential source appeared twice before Justice Kloch—on September 29, 2016, and again on October 20, 2016. In fact, Justice Kloch issued two search warrants for 229 Crowley Avenue, Upper, Buffalo New York, the first of which was not executed. The second search warrant, issued on October 20, 2016, was executed the following day and is the subject of the instant motion to suppress.

Both appearances before Justice Kloch were video recorded. At both appearances, the confidential source and the law enforcement officers were placed under oath and asked questions. On both occasions, Justice Kloch specifically found that the confidential source was credible. Therefore, based on the information from the confidential source and the information in the joint affidavit of Deputies Fry and McMahon sworn to on October 20, 2016, Justice Kloch found probable cause to issue the search warrant. *Id.* at 4. All that was enough for Judge Schroeder to recommend denial of Clark's motion to suppress.

This Court granted Clark an extension of time to file objections to Magistrate Judge Schroeder's R&R. See Docket Item 40. Notwithstanding the extension of time, Clark did not object to Judge Schroeder's R&R, and the time to object has now expired. For that reason, the defendant has waived his right to have the R&R reviewed. See Fed. R. Crim. P. 59(b)(2) ("Failure to object in accordance with this rule waives a party's right to review.").

Nevertheless, in its discretion, this Court has carefully reviewed the R&R. Docket Item 37. Based on that review and the absence of any objection, and for the reasons stated above and in the R&R, this Court adopts the R&R in its entirety. Clark's motion to suppress is DENIED.

SO ORDERED.

Dated: March 13, 2018  
Buffalo, New York

**s/ Lawrence J. Vilardo**  
LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE